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Filing date: **01/25/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91192102
Party	Defendant Lagina, Martin G.
Correspondence Address	LAGINA, MARTIN G. 121 E FRONT ST STE 200 TRAVERSE CITY, MI 49684-2570 UNITED STATES lois@rockmi.com
Submission	Answer
Filer's Name	ROBERT G. KALIK
Filer's e-mail	rkalik@kaliklewin.com
Signature	/ROBERT G. KALIK/
Date	01/25/2010
Attachments	Answer.pdf ( 10 pages )(4136187 bytes )

IN THE MATTER OF APPLICATION SERIAL NO. 77617766  
PUBLISHED IN THE OFFICIAL GAZETTE ON JUNE 2, 2009

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

PINE RIDGE WINERY, LLC.  
OPPOSER,

v.

MARTIN G. LAGINA,  
APPLICANT

OPPOSITION NO. 91192102

**ANSWER TO NOTICE OF OPPOSITION**

APPLICANT, Martin G. Lagina (“APPLICANT”), while utilizing the paragraph numbering referenced in the Notice of Opposition (“Opposition”) filed by Pine Ridge Winery, LLC (hereinafter, “Opposer”), a company organized under the laws of California, answers as follows:

1. Applicant admits the allegations contained in Paragraphs 1 and 2.
2. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations with regard to the first use of the words “ARCUS ESTATE” by Opposer, contained in Paragraphs 3, 4, 7, 11 of the Opposition, and therefore denies the same.
3. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 5, 6, and 11 of the Opposition and therefore denies the same.
4. Upon information and belief, Applicant denies the statements in Paragraphs 4 and 5 with regard to phrases the “likelihood of confusion” or “inherently distinctive.”

5. Upon information and belief, Applicant denies the statements in Paragraphs 8-10; 12–15.

Further, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations with regard to common law rights as stated in Paragraphs 5, 11, 14 and 15 and therefore denies the same. Applicant denies the statement as to "injury" in Paragraph 16.

### **AFFIRMATIVE DEFENSES**

1. Opposer's application to register the phrase "ARCUS ESTATE" as a trademark consists of two words that are not so distinctive as to afford Opposer the exclusive right to its ownership and use over the entire spectrum of classification of 033 wine goods.
2. There is no likelihood of confusion, misstate, or deception because, inter alia, Opposer's "ARCUS ESTATE" is not the name of the brand of wine sold by Opposer. Rather, the words "ARCUS ESTATE" are shown on the labels of wine sold by Opposer and it specifically refers to a single "steep, dramatic, bowl shaped vineyard in the heart of Dundee Hills" which is "tended" by Opposer's staff. See attached at Exhibit 1: "Application for Certification/Exemption of Label Bottle Approval," ("COLA") for "Archery Summit" vintage 2007 Pinot Noir label, approved November 26, 2008. Therefore, "ARCUS ESTATE" refers to the vineyard (i.e., the source of the grapes) sourcing the wine brand "Archery Summit" sold by Opposer. In contrast, Applicant's trademark "ARCUS VINETUM" is the brand name of wine sold by Applicant. See attached at Exhibit 2, COLA for ARCUS VINETUM 2005 vintage Merlot, approved August 4, 2008. ARCUS VINETUM is the actual name of the wine sold in Michigan by Applicant under the federal COLA approved by the Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau.

3. There is no likelihood of confusion, misstate, or deception because, inter alia, the channels of commerce and demographics of potential purchasers are divergent. Consequently, purchasers of the goods promoted and sold under Applicant's ARCUS VINETUM readily recognize the difference between the sources of goods promoted under the ARCUS VINETUM trademark, that the trademark "ARCUS VINETUM" refers to the name of the wine sold by Applicant, and that the source of the wine is Michigan. In contrast, purchasers of Opposer's brand "Archery Summit," produced by Opposer, recognize that in accordance with the wine label and federal COLA, "ARCUS ESTATE" only refers to a single vineyard at Dundee Hills in the state of Oregon. Purchasers of the brand ARCUS VINETUM merlot varietal from Michigan would not be confused with an Archery Summit Pinor Noir from an "ARCUS ESTATE" vineyard in Oregon.

#### **PRAYER FOR RELIEF**

WHEREFORE, APPLICANT respectfully requests that the Board deny Opposer's prayer for judgment, that it dismiss this opposition proceeding in its entirety, that if grant Applicant's request for registration of the mark, that application serial no. 77617766 should be forwarded for issuance of allowance, and that it grant any other such relief as it deems just and appropriate.

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**ATTORNEYS FOR APPLICANT – NOTICE OF APPEARANCE**

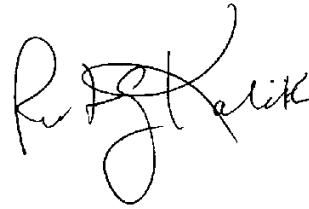
WHEREFORE, APPLICANT respectfully requests that the Board recognize the following as attorneys appointed for Applicant:

Robert G. Kalik, Esq.  
Brenna S. Lenchak, Esq.  
KALIK LEWIN  
4720 Montgomery Lane, Suite 400  
Bethesda, Maryland 20814  
(ph) 240.744.7605  
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[rkalik@kaliklewin.com](mailto:rkalik@kaliklewin.com)  
[blenchak@kaliklewin.com](mailto:blenchak@kaliklewin.com)

ANSWER DATED: JANUARY 24, 2010

Respectfully submitted,

Attorneys for MARTIN G. LAGINA,  
Applicant

A handwritten signature in black ink, appearing to read "R. G. Kalik". The signature is stylized with a large, looped "K" and a distinct "R".

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Brenna S. Lenchak, Esq.  
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[blenchak@kaliklewin.com](mailto:blenchak@kaliklewin.com)

## **EXHIBIT 1**

**COLA for “Archery Summit” Pinot Noir label,  
approved November 26, 2008.**

OMB No. 1513-0020 (01/31/2009)

TTB ID		08324-002-000063	
1. REP. ID. NO. (If any)		CT 80	OR 38
2. PLANT REGISTRY/BASIC PERMIT/BREWER'S NO. (Required) BW-OR-196		3. SOURCE OF PRODUCT (Required) <input checked="" type="checkbox"/> Domestic <input type="checkbox"/> Imported	
4. SERIAL NUMBER (Required)		5. TYPE OF PRODUCT (Required)	
YEAR 0 8 - A S 2 2		<input checked="" type="checkbox"/> WINE <input type="checkbox"/> DISTILLED SPIRITS <input type="checkbox"/> MALT BEVERAGES	
6. BRAND NAME (Required) ARCHERY SUMMIT		8. NAME AND ADDRESS OF APPLICANT AS SHOWN ON PLANT REGISTRY, BASIC PERMIT, OR BREWER'S NOTICE. INCLUDE APPROVED DBA OR TRADENAME IF USED ON THE LABEL (Required) ARCHERY SUMMIT dba: Archery Summit Winery 18599 NE Archery Summit Road Dayton, OR 97114	
7. FANCIFUL NAME (If any) Cellar Collection Arcus Estate		8a. MAILING ADDRESS, IF DIFFERENT Attn: Jennifer Freedman 5901 Silverado Trail Napa, CA 94458	
9. E-MAIL ADDRESS jenniferf@pineridgewine.co		10. FORMULA/SOP NO. (If any) n/a	11. LAB. NO. & DATE/PRE-IMPORT NO. & DATE (If any) n/a
12. NET CONTENTS 750ml	13. ALCOHOL CONTENT 13.9%	14. WINE APPELLATION (If on label) Dundee Hills	
15. WINE VINTAGE DATE (If on label) 2007	16. PHONE NUMBER 707.257.4704	17. FAX NUMBER 707.257.4784	
18. TYPE OF APPLICATION (Check applicable box(es)) a. <input checked="" type="checkbox"/> CERTIFICATE OF LABEL APPROVAL b. <input type="checkbox"/> CERTIFICATE OF EXEMPTION FROM LABEL APPROVAL "For sale in _____ only" (Fill in State abbreviation) c. <input type="checkbox"/> DISTINCTIVE LIQUOR BOTTLE APPROVAL. TOTAL BOTTLE CAPACITY BEFORE CLOSURE _____ (Fill in amount) d. <input type="checkbox"/> RESUBMISSION AFTER REJECTION TTB ID _____			
19. SHOW ANY WORDING (a) APPEARING ON MATERIALS FIRMLY AFFIXED TO THE CONTAINER (e.g., caps, celloseals, corks, etc.) OTHER THAN THE LABELS AFFIXED BELOW, OR (b) BLOWN, BRANDED, OR EMBOSSED ON THE CONTAINER (e.g., net contents, etc.). THIS WORDING MUST BE NOTED HERE EVEN IF IT DUPLICATES PORTIONS OF THE LABELS AFFIXED BELOW. ALSO, PROVIDE TRANSLATIONS OF FOREIGN LANGUAGE TEXT APPEARING ON LABELS. Net contents may be blown into glass. The wording "Cellar Collection" may appear near the front or back label.			

## PART II - APPLICANT'S CERTIFICATION

Under the penalties of perjury, I declare: that all statements appearing on this application are true and correct to the best of my knowledge and belief; and, that the representations on the labels attached to this form, including supplemental documents, truly and correctly represent the content of the containers to which these labels will be applied. I also certify that I have read, understood, and complied with the conditions and instructions which are attached to an original TTB F 5100-31, Certificate/Exemption of Label/Bottle Approval.

20. DATE OF APPLICATION 11/05/08	21. SIGNATURE OF APPLICANT OR AUTHORIZED AGENT <i>Jennifer Freedman</i>	22. PRINT NAME OF APPLICANT OR AUTHORIZED AGENT Jennifer Freedman
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## PART III - TTB CERTIFICATE

This certificate is issued subject to applicable laws, regulations, and conditions as set forth in the instructions portion of this form.

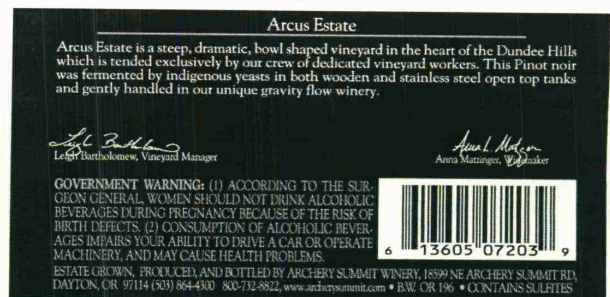
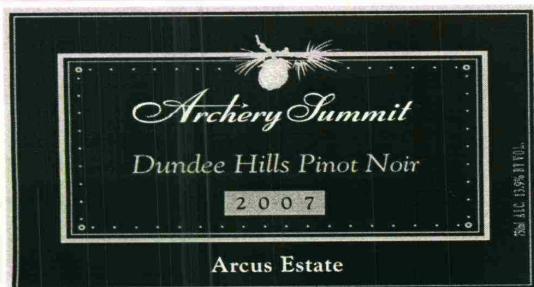
23. DATE ISSUED NOV 26 2008	24. AUTHORIZED SIGNATURE, ALCOHOL AND TOBACCO TAX AND TRADE BUREAU <i>Anna M. Mazer</i>
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## FOR TTB USE ONLY

QUALIFICATIONS

EXPIRATION DATE (If any)

AFFIX COMPLETE SET OF LABELS BELOW (See General Instructions A, B, and C)



TTB F 5100.31 (10/2007) PREVIOUS EDITIONS ARE OBSOLETE

## **EXHIBIT 2**

**COLA for ARCUS VINETUM**

**approved August 4, 2008.**



This certificate is issued subject to applicable laws, regulations and conditions as set forth in the instructions portion of this form.

**23. DATE ISSUED**

08/04/2008

**24. AUTHORIZED SIGNATURE, ALCOHOL AND TOBACCO TAX AND TRADE BUREAU**

**FOR TTB USE ONLY****QUALIFICATIONS**

When new labels are printed, all the mandatory information excluding the alcohol content must appear in printing not smaller than two (2) millimeters. This includes lower case lettering. See 27 CFR 4.38 (b). (brand label - Old Mission Peninsula)

**EXPIRATION DATE (if any)****STATUS**

THE STATUS IS APPROVED.

**CLASS/TYPE DESCRIPTION**

TABLE RED AND ROSE WINE

AFFIX COMPLETE SET OF LABELS BELOW

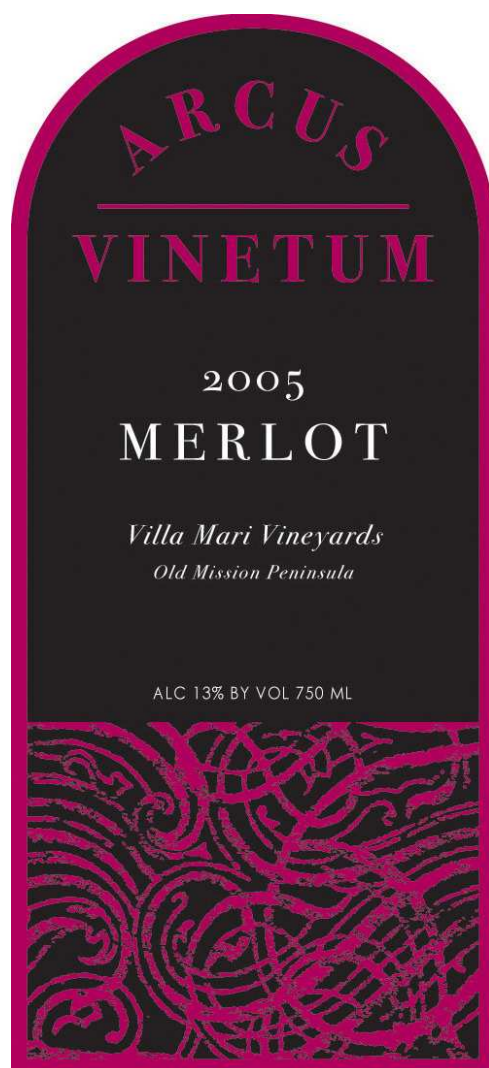
Image Type: Back

Actual Dimensions: 2.5 inches W X 5.5 inches H



Image Type: Brand (front)

Actual Dimensions: 2.5 inches W X 5.5 inches H



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TTB F 5100.31 (6/2006) PREVIOUS EDITIONS ARE OBSOLETE

**CERTIFICATE OF SERVICE**

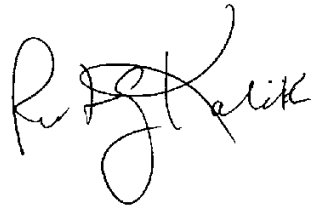
The undersigned hereby certifies that the attached Answer was served by depositing the same with the U.S. Postal Service, certified First Class Mail, addressed to the appointed attorney of record for the Opposer PINE RIDGE WINERY, LLC. as follows:

Heather A. Dunn, Esq.  
DLA Piper LLP (US)  
555 Mission Street, Suite 2400  
San Francisco, CA 94105-2933

Attorney for PINE RIDGE WINERY, LLC.

Date of Service: January 25, 2010

Attorneys for MARTIN G. LAGINA,  
Applicant

A handwritten signature in black ink, appearing to read "R. G. Kalik", with a large, stylized loop at the end.

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